

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

EVERGREEN SCHOOL DISTRICT.
OAH CASE NUMBER 2023120565

ORDER DENYING MOTION TO DISMISS COMPLAINT

JANUARY 31, 2024

On December 15, 2023, Parent on behalf of Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, naming Evergreen School District. The Office of Administrative Hearings is referred to as OAH.

Student's complaint alleges Evergreen's December 17, 2021, psychoeducational assessment failed to meet legal requirements. The complaint also claims Student was denied a free appropriate public education because Evergreen failed to conduct a functional behavior assessment. As remedies, Student seeks publicly funded independent educational evaluations in psychoeducation and functional behavior.

On January 25, 2024, Evergreen filed a Motion to Dismiss, contending Student's complaint should be dismissed as moot because Evergreen agreed to fund independent

educational evaluations in psychoeducation and functional behavior. Evergreen argues that Student's claims in this matter are moot because Evergreen has agreed to the remedies Student's seeks, and therefore, Student's claims are no longer in controversy. Evergreen's motion included a declaration by its attorney explaining why the motion was not filed at least three business days before the prehearing conference that was held on January 29, 2024. In addition, the motion included a letter from Evergreen's director of special education dated December 21, 2023, stating Evergreen's decision to fund Student's request for independent educational evaluations in psychoeducation and functional behavior. The motion also included correspondences between the parties' attorneys regarding the status of this due process matter.

On January 29, 2024, Student filed an opposition to the motion to dismiss. Student argues that Evergreen's motion to dismiss was untimely and should be denied on that reason. Student also argues that Evergreen's December 21, 2023, written notice to fund independent educational evaluations is not an enforceable agreement, and therefore, Student's due process claims and requests for relief are not moot.

Evergreen's motion to dismiss was untimely. However, Evergreen established good cause for the late filing. On December 18, 2023, OAH served on the parties an Order that the parties must file prehearing motions at least three business days before the prehearing conference or demonstrate good cause why it was not possible to file the motion by that date. Evergreen's attorney declared she was in regular communication with Student's attorney regarding the status of the hearing, and in good faith believed the matter had resolved because Evergreen agreed to fund Student's requested independent educational evaluations. Accordingly, the motion is considered, and Student's request to deny the motion as untimely is denied.

Evergreen's motion to dismiss is denied because Evergreen failed to establish that Student's due process hearing request is moot. The purpose of the Individuals with Disabilities Education Act, called IDEA, is to ensure that all children with disabilities have available to them a free appropriate public education, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).) A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.)

The IDEA permits a parent to obtain independent educational evaluations under certain circumstances if the parent disagrees with a school district assessment. To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent evaluation. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) and (b)(2); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) When a student requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an independent educational assessment is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

Under the doctrine of mootness, a court may refuse to hear a case because the case does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.)

Evergreen's December 21, 2023, written notice of Evergreen's decision to fund Student's independent educational evaluations in psychoeducation and functional behavior is not a binding, enforceable agreement. Student's complaint seeks an order from OAH requiring Evergreen to fund the independent educational evaluations. An order from OAH is binding on all parties. (Ed. Code, § 56505, subd. (h).)

In addition, the parties have not entered into a binding, enforceable final settlement agreement obligating Evergreen to fund Student's requested independent educational evaluations. Therefore, effectual relief in the form of an enforceable order from OAH binding Evergreen to fund independent educational evaluations remains available for Student through this due process proceeding. Accordingly, the motion to dismiss is denied.

ORDER

Evergreen's Motion to Dismiss is denied.

Rommel P. Cruz

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Administrative Law Judge

Office of Administrative Hearings